

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NOV 17 2004
C.A. NO. 04-10373-REK

U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EARTHSOURCE, INC.,

Plaintiff

v.

THE TOWN OF RAYNHAM, GORDON D.
LUCIANO, DONALD L. MCKINNON,
RAYMOND W. PLATT, individually & as
members of the Raynham Board of Health,

Defendants

DEFENDANTS' MOTION FOR
LEAVE TO FILE ADDITIONAL
PAPERS IN SUPPORT OF THEIR
MOTION FOR JUDGMENT ON
THE PLEADINGS ON COUNT IV
PURSUANT TO LOCAL RULE
7.1(B)(3)

Now come the defendants and hereby move pursuant to Local Rule 7.1(B)(3) for leave to file additional papers in support of their Motion for Judgment on Count IV. Specifically, the defendants wish to submit a reply to the plaintiff's characterization of their due process claim as including a takings claim, which is not specifically pled in their Complaint.

As grounds therefor, the defendants state that it is well-established that a constitutional takings claim is not ripe prior to the exhaustion of remedies confirmed by the State. If the takings claim had been clearly pled, the defendants would have addressed it in their original Motion for Judgment on the Pleadings. Having been deprived of that opportunity, the defendants wish to address the plaintiffs' new taking claim in additional papers. The additional papers proposed for filing, Reply Memorandum to Plaintiff's Opposition to Defendants Partial Motion For Judgment on the Pleadings on Count IV of the Complaint Pursuant to Fed.R.Civ.P.12(c), are enclosed herewith.

WHEREFORE, the defendants respectfully request that this Court grant their motion to submit additional papers in support of their Motion for Judgment on the Pleadings on Count IV Pursuant to Local Rule 7.1(B)(3).

DEFENDANTS,

By their attorneys,

/s Katharine Goree Doyle
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